

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ELLEN MCCORMICK,

Plaintiff,

-against-

PHINIZY & PHEBE HANDMADE LLC (d/b/a
PHIN & PHEBES ICE CREAM), CRISTA
FREEMAN, AND JESS EDDY,

Defendants.

X

:

:

:

:

:

:

:

:

:

:

X

18-CV-00916(ENV)(SJB)

**DECLARATION IN
SUPPORT OF MOTION FOR
DEFAULT JUDGMENT**

Patrick J. Boyd, Esq. declares, pursuant to 28 U.S.C. § 1746, under penalty of perjury,
that the following is true and correct:

1. I am admitted to practice before this Court and I am the principal of The Boyd Law Group, PLLC, attorneys for Plaintiff Ellen McCormick (“Plaintiff”) in this action.

2. I respectfully submit this Declaration in support of Plaintiff’s Motion for Default Judgment (the “Motion”) against Phinizy & Phebe Handmade LLC (d/b/a Phin & Phebes Ice Cream) (hereinafter “Defendant”) and to supply this Court with documents relevant to its determination of the Motion.

3. This action was commenced pursuant to a Complaint filed on February 12, 2018. (Annexed hereto as Exhibit A is a true and correct copy of the Complaint.)

4. Defendant was properly served on April 11, 2018.

5. Plaintiff brings this action alleging Defendants failure to pay her wages pursuant to the New York Labor Law (“NYLL”) and the Fair Labor Standards Act (“FLSA”).

6. Defendants failed to pay Plaintiff approximately four-month period from May 2017

to September 2017.

7. In addition, Defendant retaliated against Plaintiff by terminating her employment for complaining about the refusal to pay her wages and Plaintiff's decision to inform Defendant Crista Freeman ("Freeman") that she would file a complaint with the Department of Labor.

8. Defendant has not answered or otherwise moved with respect to the Complaint, and the time for Defendant to answer or otherwise move has not been extended.

9. As such, upon Plaintiff's request, the Clerk of the Court entered a Certificate of Default against Defendant Phinizy & Phebe on November 15, 2018. (A true and correct copy of the November 15, 2018 Certificate of Default is annexed hereto as Exhibit B.)

10. Annexed hereto as Exhibit C is a Certificate of Service attesting that an additional copy of these moving papers (with Exhibits) was simultaneously sent to Defendants by Federal Express. A copy of the mailing labels are included with Exhibit C.

11. Annexed hereto as Exhibit D is a Proposed Order of Default Judgment.

12. Defendant is not an infant or incompetent. Defendant is not presently in the military service of the United States as is clear from the facts in this litigation which demonstrate that Defendant Phinizy & Phebe is a limited liability company and not a living person.

13. Defendant Phinizy & Phebe is indebted to Plaintiff based on:

- a. Defendants' failure to pay Plaintiff the minimum wage pursuant to the Federal Labor Standards Act ("FLSA") 29 U.S.C. § 201 et seq.;
- b. Defendants' failure to pay Plaintiff's wages pursuant to New York Labor Law ("NYLL") §§ 193 and 198;
- c. Defendants' retaliation against Plaintiff for complaining about Defendant's wage

violations pursuant to 29 U.S.C. § 215(a)(3);

- d. Defendants' retaliation against Plaintiff for complaining about Defendants' wage violations pursuant to NYLL § 215; and
- e. Defendants' failure to provide Plaintiff with Notice and Acknowledgement of Pay Rate and Payday pursuant to NYLL § 195(1).

WHEREFORE, Plaintiff requests that the default of Defendant Phinizy & Phebe Handmade LLC be noted and a judgment of default be entered against Defendant Phinizy & Phebe Handmade LLC.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the liability claimed is justly due to Plaintiff, and that no part thereof has been paid.

Dated: November 1, 2019
New York, New York

THE BOYD LAW GROUP, PLLC

By: /s/ Patrick J. Boyd
Patrick J. Boyd (PB0921)
370 Lexington Avenue, Suite 1012
New York, New York 10017
Tel: (212) 867-3675
Fax: (212) 867-5765
pboyd@theboydlawgroup.com
Attorneys for Plaintiff